

SENATE BILL No. 390

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6-2-1.1; IC 22-9; IC 35-44.2-1-15.

Synopsis: Economic intimidation of a legislator. Creates a cause of action with the civil rights commission (commission) concerning economic intimidation of a legislator. Provides that the commission may assess a fine of up to \$5,000,000 for economic intimidation of a legislator. Makes it a Level 6 felony if a person knowingly or intentionally uses the person's economic power to cause a legislator to lose the legislator's employment (other than the legislator's office) because of the legislator's: (1) opinion; (2) vote on legislation; or (3) duties as a legislator. Provides that the attorney general may prosecute this crime under certain circumstances. Provides that the supreme court has the exclusive jurisdiction to hear an appeal of the crime.

Effective: July 1, 2016.

Delph

January 12, 2016, read first time and referred to Committee on Rules & Legislative Procedure.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 390

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-6-2-1.1, AS AMENDED BY P.L.205-2013,
- 2 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2016]: Sec. 1.1. The attorney general has concurrent
- 4 jurisdiction with the prosecuting attorney in the prosecution of the
- 5 following:
- 6 (1) Actions in which a person is accused of committing, while a
- 7 member of an unlawful assembly as defined in IC 35-45-1-1, a
- 8 homicide (IC 35-42-1).
- 9 (2) Actions in which a person is accused of assisting a criminal
- 10 (IC 35-44.1-2-5), if the person alleged to have been assisted is a
- 11 person described in subdivision (1).
- 12 (3) Actions in which a sheriff is accused of any offense that
- 13 involves a failure to protect the life of a prisoner in the sheriff's
- 14 custody.
- 15 (4) Actions in which a violation of IC 2-8.2-4-6 (concerning
- 16 constitutional convention delegates) has occurred.
- 17 (5) **Actions in which a person is accused of committing**



economic intimidation of a legislator (IC 35-44.2-1-15).

SECTION 2. IC 22-9-1-6, AS AMENDED BY P.L.136-2014, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. (a) The commission shall establish and maintain a permanent office in the city of Indianapolis.

(b) Except as it concerns judicial review, the commission may adopt rules under IC 4-22-2 to implement this chapter.

(c) The commission shall formulate policies to effectuate the purposes of this chapter and make recommendations to agencies and officers of the state or local subdivisions thereof to effectuate such policies. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state or any political subdivision or agency thereof shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any matter before the commission.

(d) The commission shall receive and investigate complaints alleging:

(A) discriminatory practices; and

(B) economic intimidation of a legislator as described in IC 22-9-11;

The commission shall not hold hearings in the absence of a complaint. All investigations of complaints shall be conducted by staff members of the civil rights commission or their agents.

(e) The commission may create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this chapter. The commission may itself, or it may empower these agencies and councils to:

(1) study the problems of discrimination in the areas covered by section 2 of this chapter when based on race, religion, color, sex, handicap, national origin, or ancestry; and

(2) foster through community effort, or otherwise, good will among the groups and elements of the population of the state.

These agencies and councils may make recommendation to the commission for the development of policies and procedures in general. Advisory agencies and conciliation councils created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for reasonable and necessary actual expenses.

(f) The commission may issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, handicap, national origin, or ancestry.

(g) The commission shall prevent any person from discharging,



expelling, or otherwise discriminating against any other person because the person filed a complaint, testified in any hearing before this commission, or in any way assisted the commission in any matter under its investigation.

(h) The commission may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the production for examination of any books and papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena issued under this section shall constitute a contempt. All hearings shall be held within Indiana at a location determined by the commission. A citation of contempt may be issued upon application by the commission to the circuit or superior court in the county in which the hearing is held or in which the witness resides or transacts business.

(i) The commission may appoint administrative law judges other than commissioners, when an appointment is deemed necessary by a majority of the commission. The administrative law judges shall be members in good standing before the bar of Indiana and shall be appointed by the chairman of the commission. An administrative law judge appointed under this subsection shall have the same powers and duties as a commissioner sitting as an administrative law judge. However, the administrative law judge may not issue subpoenas.

(j) The commission shall state its findings of fact after a hearing and, if the commission finds a person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power:

(1) to restore complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice; however, except in discriminatory practices involving veterans, this specific provision when applied to orders pertaining to employment shall include only wages, salary, or commissions;

(2) to require the posting of notice setting forth the public policy of Indiana concerning civil rights and respondent's compliance with the policy in places of public accommodations;

(3) to require proof of compliance to be filed by respondent at periodic intervals; and



(4) to require a person who has been found to be in violation of this chapter and who is licensed by a state agency authorized to grant a license to show cause to the licensing agency why the person's license should not be revoked or suspended.

When an employer has been found to have committed a discriminatory practice in employment by failing to employ an applicant on the basis that the applicant is a veteran, the order to restore the veteran's losses may include placing the veteran in the employment position with the employer for which the veteran applied.

(k) Judicial review of a cease and desist order or other affirmative action as referred to in this chapter may be obtained under IC 22-9-8. If no proceeding to obtain judicial review is instituted within thirty (30) days from receipt of notice by a person that an order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of the order in circuit or superior court upon showing that the person is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(l) If, upon all the evidence, the commission shall find that a person has not engaged in any unlawful practice or violation of this chapter, the commission shall state its findings of facts and shall issue and cause to be served on the complainant an order dismissing the complaint as to the person.

(m) The commission may furnish technical assistance requested by persons subject to this chapter to further compliance with this chapter or with an order issued thereunder.

(n) The commission shall promote the creation of local civil rights agencies to cooperate with individuals, neighborhood associations, and state, local, and other agencies, both public and private, including agencies of the federal government and of other states.

(o) The commission may reduce the terms of conciliation agreed to by the parties to writing (to be called a consent agreement) that the parties and a majority of the commissioners shall sign. When signed, the consent agreement shall have the same effect as a cease and desist order issued under subsection (j). If the commission determines that a party to the consent agreement is not complying with it, the commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement and the party is subject to the commission's jurisdiction and resides or transacts business within the county in



1 which the petition for enforcement is brought.

2 (p) In lieu of investigating a complaint and holding a hearing under
3 this section, the commission may issue an order based on findings and
4 determinations by the federal Department of Housing and Urban
5 Development or the federal Equal Employment Opportunity
6 Commission concerning a complaint that has been filed with one (1) of
7 these federal agencies and with the commission. The commission shall
8 adopt by rule standards under which the commission may issue such an
9 order.

10 (q) Upon notice that a complaint is the subject of an action in a
11 federal court, the commission shall immediately cease investigation of
12 the complaint and may not conduct hearings or issue findings of fact or
13 orders concerning that complaint.

14 SECTION 3. IC 22-9-11 IS ADDED TO THE INDIANA CODE AS
15 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2016]:

17 **Chapter 11. Economic Intimidation of a Legislator**

18 **Sec. 1. As used in this chapter, "legislator" means a member of**
19 **the house of representatives or the senate of the general assembly.**

20 **Sec. 2. A person may not use the person's economic power to**
21 **cause a legislator to lose the legislator's employment (other than**
22 **the legislator's office) because of the legislator's:**

- 23 (1) opinion;
- 24 (2) vote on legislation; or
- 25 (3) duties as a legislator.

26 **Sec. 3. (a) A legislator who believes that the legislator's rights**
27 **have been violated under this chapter may bring a complaint to the**
28 **commission under IC 22-9-1-6.**

29 **(b) The civil rights commission shall determine whether the**
30 **complaint requires action under IC 22-9-1-6.**

31 **(c) The civil rights commission shall adopt rules under IC 4-22-2**
32 **to carry out this chapter.**

33 **(d) The civil rights commission may issue a fine of up to five**
34 **million dollars (\$5,000,000) for all violations of this chapter by a**
35 **single person.**

36 SECTION 4. IC 35-44.2-1-15 IS ADDED TO THE INDIANA
37 CODE AS A NEW SECTION TO READ AS FOLLOWS
38 [EFFECTIVE JULY 1, 2016]: **Sec. 15. (a) As used in this section,**
39 **"legislator" means a member of the house of representatives or the**
40 **senate of the general assembly.**

41 **(b) A person who knowingly or intentionally uses the person's**
42 **economic power to cause a legislator to lose the legislator's**



1 employment (other than the legislator's office) because of the
2 legislator's:

3 (1) opinion;

4 (2) vote on legislation; or

5 (3) duties as a legislator;

6 commits economic intimidation of a legislator, a Level 6 felony.

7 (c) If a prosecuting attorney has not initiated prosecution within
8 sixty (60) days after receiving a complaint of an alleged crime
9 described in subsection (b), the attorney general may prosecute the
10 case on behalf of the state.

11 (d) The supreme court has the exclusive jurisdiction to hear an
12 appeal concerning this section.

13 (e) The attorney general or a prosecuting attorney filing a
14 complaint of a crime described in this section shall also forward
15 the complaint to the applicable United States attorney, who may
16 determine if any federal crimes have been committed.

